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**MEMORANDUM**  
**MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT**

9 **To:** Monroe County Development Review Committee and  
10 Emily Schemper, AICP, CFM, Senior Director of Planning and Environmental  
11 Resources  
12  
13 **From:** Cheryl Cioffari, AICP, Comprehensive Planning Manager  
14  
15 **Date:** January 8, 2019  
16  
17 **Subject:** An ordinance by the Monroe County Board of County Commissioners amending Policy  
18 101.5.29 of the 2030 Monroe County Comprehensive Plan to address existing lawfully  
19 established nonconforming residential uses, not including mobile homes and not  
20 including transient uses, to allow for repair and replacement. (File #2018-209)  
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22 **Meeting: January 15, 2019**

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24 **I. REQUEST**

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26 The Monroe County Planning & Environmental Resources Department is proposing amendments  
27 to the 2030 Comprehensive Plan to amend Policy 101.5.29 to address existing lawfully  
28 established nonconforming residential uses, not including mobile homes and not including  
29 transient uses, to allow for repair and replacement of such dwelling units with the same type of  
30 dwelling unit, and it shall not be considered a nonconforming use.  
31

32 **II. BACKGROUND INFORMATION**

33  
34 Monroe County's current adopted Comprehensive Plan has an existing policy that protects  
35 nonconforming lawfully established residential density. This policy allows the density to be  
36 replaced, regardless of the density limitations established in Policy 101.5.25. Most  
37 nonconforming single-family residences can be replaced in footprint, but only if it is located in a  
38 FLUM and zoning district that permits residential uses.  
39

40 Following the impacts of Hurricane Irma and the subsequent rebuilding of dwelling units, it has  
41 come to the attention of staff that some property owners are prevented from rebuilding because  
42 the residential dwelling unit is considered a nonconforming use within certain Future Land Use  
43 Map (FLUM) categories and land use (zoning) districts.  
44

45 **Community Meeting and Public Participation**

46 In accordance with LDC Section 102-159(b)(3), a Community Meeting for the Comprehensive  
47 Plan and Land Development Code text amendments was held on November 27, 2018 in  
48 Marathon and provided for public input. There were five members of the public in attendance

1 who posed general questions about the timeframe of implementation and who would benefit from  
2 the proposed of the proposed text amendment.

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4 *The subject of this staff report is the amendment to the Comprehensive Plan.*

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6 **III. PROPOSED COMPREHENSIVE PLAN TEXT AMENDMENTS**

7  
8 Proposed Amendment (deletions are ~~stricken through~~; additions are shown in underlined):

9  
10 \*\*\*\*\*

11 **Policy 101.5.29**

12 Notwithstanding the density limitations set forth in Policy 101.5.25, land upon which a lawfully  
13 established residential dwelling unit exists shall be entitled to a density of one dwelling unit per  
14 each recognized lawfully established unit. Such lawfully-established dwelling unit(s) shall not be  
15 considered as nonconforming as to the density provisions of Policy 101.5.25 and the Monroe  
16 County Land Development Code. Notwithstanding the nonconforming use provisions of Policy  
17 101.8.4, existing lawfully established residential uses, not including mobile homes, and not  
18 including transient uses, shall be entitled to repair and/or replace such dwelling units with the  
19 same type of dwelling unit and shall not be considered a nonconforming use(s).

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23 **IV. ANALYSIS OF PROPOSED AMENDMENT**

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25 The following definitions are provided in the Glossary of the Comprehensive Plan:

- 26 • *Nonconforming Use* means a use which does not conform to a current provision or  
27 regulation provided in the Comprehensive Plan and/or LDC.
- 28 • *Nonconforming Use, Lawful* means a use which does not conform to a current  
29 provision or regulation provided in the Comprehensive Plan and/or LDC, but was  
30 permitted, or otherwise in existence lawfully, prior to the effective date of the  
31 ordinance adopting the current provision or regulation that rendered the use  
32 nonconforming.
- 33 • *Redevelopment* means the rehabilitation, improvement, and/or demolition and  
34 replacement of existing development on a site.

35 Monroe County's current adopted Comprehensive Plan has an existing policy that protects  
36 nonconforming lawfully established residential density. This policy allows the density to be  
37 replaced, regardless of the density limitations established in Policy 101.5.25.

38  
39 **Policy 101.5.29**

40 Notwithstanding the density limitations set forth in Policy 101.5.25, land upon  
41 which a lawfully established residential dwelling unit exists shall be entitled to a  
42 density of one dwelling unit per each recognized lawfully established unit. Such  
43 lawfully-established dwelling unit(s) shall not be considered as nonconforming as  
44 to the density provisions of Policy 101.5.25 and the Monroe County Code.

45  
46 Most nonconforming single-family residences can be replaced in footprint, but only if it is  
47 located in a FLUM and zoning district that permits residential uses.

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2 Following the impacts of Hurricane Irma and the subsequent rebuilding of dwelling units, it has  
3 come to the attention of staff that some property owners are prevented from rebuilding because  
4 the residential dwelling unit is considered a nonconforming use within certain Future Land Use  
5 Map (FLUM) categories and land use (zoning) districts.  
6

7 The County’s current adopted Comprehensive Plan contains a policy that protects nonresidential  
8 uses and transient uses within the RC, RL, RM and RH future land use map categories; however,  
9 these protections do not extend to residential uses.  
10

11 **Policy 101.5.5**

12 Monroe County shall maintain Land Development Regulations which allow  
13 nonconforming nonresidential and transient uses in the RC, RL, RM and RH  
14 future land use categories that lawfully existed on such lands on January 4, 1996  
15 to develop, redevelop, reestablish and/or substantially improve provided that the  
16 use is limited in density, intensity, floor area, and to the type of use that existed on  
17 January 4, 1996.  
18

19 Comprehensive Plan Objective 101.8 requires the County to reduce or eliminate the frequency of  
20 uses which are inconsistent with the land development regulations, zoning districts, Future Land  
21 Use categories and the Future Land Use Map, while recognizing that some nonconforming uses  
22 are important part of the community character. The proposed amendment would allow the  
23 replacement of existing lawfully established residential uses, not including mobile homes and not  
24 including transient uses, with the same type of dwelling units and would not be considered a  
25 nonconforming use. The replacement dwelling unit would still be required to comply with  
26 regulations set forth in the Land Development Code and Florida Building Code.  
27

28 **V. CONSISTENCY WITH THE MONROE COUNTY COMPREHENSIVE PLAN, THE**  
29 **PRINCIPLES FOR GUIDING DEVELOPMENT, AND FLORIDA STATUTES.**  
30

31 **A. The proposed amendment is consistent with the Goals, Objectives and Policies of the**  
32 **Monroe County 2030 Comprehensive Plan. Specifically, it furthers:**  
33

34 **GOAL 101**

35 Monroe County shall manage future growth to enhance the quality of life, ensure the safety of  
36 County residents and visitors, and protect valuable natural resources. [§163.3177(1), F.S.]  
37

38 **Objective 101.1**

39 Monroe County shall ensure that all development and redevelopment taking place within its  
40 boundaries does not result in a reduction of the level-of-service requirements established and  
41 adopted by this comprehensive plan. Further, Monroe County shall ensure that comprehensive  
42 plan amendments include an analysis of the availability of facilities and services or  
43 demonstrate that the adopted levels of service can be reasonably met. [§163.3177 & 163.3180,  
44 F. S.]  
45

46 **Objective 101.3**

1 Monroe County shall regulate new residential development based upon the finite carrying  
2 capacity of the natural and man-made systems and the growth capacity while maintaining a  
3 maximum hurricane evacuation clearance time of 24 hours.  
4

5 **Objective 101.8**

6 Monroe County shall eliminate or reduce the frequency of uses which are inconsistent with the  
7 applicable provisions of the land development regulations, zoning districts, Future Land Use  
8 categories and the Future Land Use Map. In Monroe County, some nonconforming uses are an  
9 important part of the community character and the County desires to maintain such character  
10 and protect these lawfully established, nonconforming uses and allow them to be repaired or  
11 replaced. [§163.3177 (6)a.2.e.]  
12

13 **B. The amendment is consistent with the Principles for Guiding Development for the Florida  
14 Keys Area, Section 380.0552(7), Florida Statutes.**  
15

16 For the purposes of reviewing consistency of the adopted plan or any amendments to that plan  
17 with the principles for guiding development and any amendments to the principles, the  
18 principles shall be construed as a whole and no specific provision shall be construed or applied  
19 in isolation from the other provisions.  
20

- 21 (a) Strengthening local government capabilities for managing land use and development so that  
22 local government is able to achieve these objectives without continuing the area of critical  
23 state concern designation.
- 24 (b) Protecting shoreline and benthic resources, including mangroves, coral reef formations,  
25 seagrass beds, wetlands, fish and wildlife, and their habitat.
- 26 (c) Protecting upland resources, tropical biological communities, freshwater wetlands, native  
27 tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and  
28 beaches, wildlife, and their habitat.
- 29 (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound  
30 economic development.
- 31 (e) Limiting the adverse impacts of development on the quality of water throughout the Florida  
32 Keys.
- 33 (f) Enhancing natural scenic resources, promoting the aesthetic benefits of the natural  
34 environment, and ensuring that development is compatible with the unique historic  
35 character of the Florida Keys.
- 36 (g) Protecting the historical heritage of the Florida Keys.
- 37 (h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and  
38 proposed major public investments, including:  
39
  - 40 1. The Florida Keys Aqueduct and water supply facilities;
  - 41 2. Sewage collection, treatment, and disposal facilities;
  - 42 3. Solid waste treatment, collection, and disposal facilities;
  - 43 4. Key West Naval Air Station and other military facilities;
  - 44 5. Transportation facilities;
  - 45 6. Federal parks, wildlife refuges, and marine sanctuaries;
  - 46 7. State parks, recreation facilities, aquatic preserves, and other publicly owned  
47 properties;
  - 48 8. City electric service and the Florida Keys Electric Co-op; and

1                   9. Other utilities, as appropriate.  
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- 3           (i) Protecting and improving water quality by providing for the construction, operation,  
4           maintenance, and replacement of stormwater management facilities; central sewage  
5           collection; treatment and disposal facilities; and the installation and proper operation and  
6           maintenance of onsite sewage treatment and disposal systems.  
7           (j) Ensuring the improvement of nearshore water quality by requiring the construction and  
8           operation of wastewater management facilities that meet the requirements of ss.  
9           381.0065(4)(1) and 403.086(10), as applicable, and by directing growth to areas served by  
10          central wastewater treatment facilities through permit allocation systems.  
11          (k) Limiting the adverse impacts of public investments on the environmental resources of the  
12          Florida Keys.  
13          (l) Making available adequate affordable housing for all sectors of the population of the  
14          Florida Keys.  
15          (m) Providing adequate alternatives for the protection of public safety and welfare in the event  
16          of a natural or manmade disaster and for a postdisaster reconstruction plan.  
17          (n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and  
18          maintaining the Florida Keys as a unique Florida resource.  
19          Pursuant to Section 380.0552(7) Florida Statutes, the proposed amendment is not inconsistent  
20          with the Principles for Guiding Development as a whole and is not inconsistent with any  
21          Principle.  
22

23 **C. The proposed amendment is consistent with the Part II of Chapter 163, Florida Statute**  
24 **(F.S.). Specifically, the amendment furthers:**  
25

26          163.3161(4), F.S. – It is the intent of this act that local governments have the ability to preserve  
27          and enhance present advantages; encourage the most appropriate use of land, water, and  
28          resources, consistent with the public interest; overcome present handicaps; and deal  
29          effectively with future problems that may result from the use and development of land  
30          within their jurisdictions. Through the process of comprehensive planning, it is intended  
31          that units of local government can preserve, promote, protect, and improve the public  
32          health, safety, comfort, good order, appearance, convenience, law enforcement and fire  
33          prevention, and general welfare; facilitate the adequate and efficient provision of  
34          transportation, water, sewerage, schools, parks, recreational facilities, housing, and other  
35          requirements and services; and conserve, develop, utilize, and protect natural resources  
36          within their jurisdictions.  
37

38          163.3161(6), F.S. – It is the intent of this act that adopted comprehensive plans shall have the  
39          legal status set out in this act and that no public or private development shall be permitted  
40          except in conformity with comprehensive plans, or elements or portions thereof, prepared  
41          and adopted in conformity with this act.  
42

43          163.3177(1), F.S. – The comprehensive plan shall provide the principles, guidelines, standards,  
44          and strategies for the orderly and balanced future economic, social, physical,  
45          environmental, and fiscal development of the area that reflects community commitments to  
46          implement the plan and its elements. These principles and strategies shall guide future  
47          decisions in a consistent manner and shall contain programs and activities to ensure  
48          comprehensive plans are implemented. The sections of the comprehensive plan containing

1 the principles and strategies, generally provided as goals, objectives, and policies, shall  
2 describe how the local government's programs, activities, and land development  
3 regulations will be initiated, modified, or continued to implement the comprehensive plan  
4 in a consistent manner. It is not the intent of this part to require the inclusion of  
5 implementing regulations in the comprehensive plan but rather to require identification of  
6 those programs, activities, and land development regulations that will be part of the strategy  
7 for implementing the comprehensive plan and the principles that describe how the  
8 programs, activities, and land development regulations will be carried out. The plan shall  
9 establish meaningful and predictable standards for the use and development of land and  
10 provide meaningful guidelines for the content of more detailed land development and use  
11 regulations.

12  
13 163.3201, F.S. – Relationship of comprehensive plan to exercise of land development  
14 regulatory authority.—It is the intent of this act that adopted comprehensive plans or  
15 elements thereof shall be implemented, in part, by the adoption and enforcement of  
16 appropriate local regulations on the development of lands and waters within an area. It is  
17 the intent of this act that the adoption and enforcement by a governing body of regulations  
18 for the development of land or the adoption and enforcement by a governing body of a land  
19 development code for an area shall be based on, be related to, and be a means of  
20 implementation for an adopted comprehensive plan as required by this act.

## 21 22 **VI. PROCESS**

23  
24 Comprehensive Plan Amendments may be proposed by the Board of County Commissioners, the  
25 Planning Commission, the Director of Planning, or the owner or other person having a  
26 contractual interest in property to be affected by a proposed amendment. The Director of  
27 Planning shall review and process applications as they are received and pass them onto the  
28 Development Review Committee and the Planning Commission.

29  
30 The Planning Commission shall hold at least one public hearing. The Planning Commission shall  
31 review the application, the reports and recommendations of the Department of Planning &  
32 Environmental Resources and the Development Review Committee and the testimony given at  
33 the public hearing. The Planning Commission shall submit its recommendations and findings to  
34 the Board of County Commissioners (BOCC). The BOCC holds a public hearing to consider the  
35 transmittal of the proposed comprehensive plan amendment, and considers the staff report, staff  
36 recommendation, and the testimony given at the public hearing. The BOCC may or may not  
37 recommend transmittal to the State Land Planning Agency. The amendment is transmitted to  
38 State Land Planning Agency, which then reviews the proposal and issues an Objections,  
39 Recommendations and Comments (ORC) Report. Upon receipt of the ORC report, the County  
40 has 180 days to adopt the amendments, adopt the amendments with changes or not adopt the  
41 amendment.

## 42 43 **VII. STAFF RECOMMENDATION**

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45 Staff recommends approval of the proposed amendment.